GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Mines and Minerals – Bauxite Mining – Memorandum of Understanding entered with M/s Jindal South West Holdings Ltd – Withdrawal of said MoU - Orders - Issued.

INDUSTRIES AND COMMERCE (M-II) DEPARTMENT

G.O.MS.No. 45 **Dated: 06-04-2016**

Read the following:-

1) G.O.Ms.No.999, Industries & Commerce Dept., dt.25.10.1975.
2) MoU dated 01-07-2005 between GoAP and M/s JSWH Limited as amended on 03-08-2007 and 15-11-2007.
3 G.O.Rt.No.475, Ind. & Com (M.III) Department, dt.01-08-2007
4) G.O.Rt.No.735, Ind. & Com (M.III) Department, dt. 06-11-2007.
5) G.O.Ms.No.222, Ind & Com (M.III) Department, dt.13.08.2008.
6) From the Vice Chairman & Managing Director, APMDC Ltd., proposals dt.20-10-2008.
7) G.O.Ms.No.289, Ind & Com (M.III) Department, dt.30.10.2008.
8) Agreement dt.30.10.2008 entered between M/s APMDC and M/s ANRAK.
9) From the VC&MD, M/s APMDC Ltd., Hyd Lr.No.APMDC/JSWHL/05/889, dt.10.10.2014, dt.29.06.2015 and dt.29.07.2015.

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O R D E R:

In the G.O. 1st read above**,** Government of Andhra Pradesh had issued orders reserving the entire Bauxite bearing areas for exclusive exploitation by Public Sector Undertakings, as the State of Andhra Pradesh is having vast reserves of Bauxite, about 600 Million Tonnes metallurgical grade in Visakhapatnam and East Godavari Districts, accounting for 21.65% of total Bauxite reserves in India. All these areas fall under Reserved Forest as well as notified tribal areas.

2. In the reference 2nd read above, Government of Andhra Pradesh had entered an Memorandum of Understanding (MoU) with M/s Jindal South West Holdings Ltd., on 01.07.2005 to establish 2.5 lakhs Tons per annum Alumina refinery and Smelter with 9,000 crores investment. Government of Andhra Pradesh has agreed to provide 240 million tons of Bauxite ore from Aruku and Sapparla blocks to the proposed Alumina plant at S.Kota, Vizianagaram District. Later, the said MoU was amended twice.

3. In the G.Os. 3rd & 4th read above, Government have constituted a six Member High Powered Committee for fixation of sale price of Bauxite and the percentage of equity that M/s Andhra Pradesh Mineral Development Corporation Limited shall demand in the proposed Value Added Industry with a direction that the Committee shall take into consideration the points mentioned therein and to submit their report within six months.

4. The High Powered Committee, constituted for fixation of sale price of Bauxite have suggested to consult M/s Price Water House Coopers Private Limited. M/s Price Water House Coopers Private Ltd., have submitted its final report on the study of bauxite price methodology and also on equity participation of M/s APMDC Ltd, and made elaborate discussions in the matter.

5. Accordingly, the Government in the G.O. 5th read above, have issued orders accepting and approved the above recommendations of the High Powered Committee, in toto and directed M/s Andhra Pradesh Mineral Development Corporation Limited to enter into Bauxite supply agreements and take necessary further action accordingly by taking the approvals of Government wherever required from time to time, if necessary, and intimate the action taken by them at every stage to Government, scrupulously.

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The Bauxite Supply Agreement shall be entered into with a stipulation that it shall not be implemented till permission of the Government of India is obtained by Government of Andhra Pradesh / M/s Andhra Pradesh Mineral Development Corporation Limited under Section 2(ii) of Forest Conservation Act,1980, and also Environment Clearances for the Bauxite Mining Project as per the directions of Hon'ble High Court of Andhra Pradesh in W.P. No.1571, dt.20-06-2006.

6. In the reference 9th read above, the VC&MD, M/s APMDC Ltd. has reported that the Comptroller Auditor General (CAG) of India in their report on public undertakings for the year ended March, 2013 pertaining to APMDC has observed the following:

i. These MoUs were entered into by the State Govt., on the basis of negotiations without following the process of EoI.

ii. As per the guidelines of Ministry of Mines, GoI, APMDC should hold the mining lease and carryout the mining operations as its own cost and should enter into Bauxite Supply Agreement with downstream Mineral Processing Plants ensuring that the entire profit from mining would accrue to APMDC.

iii. APMDC is having a nominal equity of 1.5% which was worked out on the basis of valuation of Mines and investment required for establishment of the Aluminum Companies.

iv. The State Government informed the Government of India, that entire profit from Sales of Bauxite will accrue only to APMDC. Contrary to this, sale price of Bauxite was fixed based on Royalty method and profit was limited to 1.25 times of Royalty charges for Bauxite.

v. APMDC sought permission (April 2012) of GoAP for renegotiating the terms and conditions of the MoU/Agreement with 2nd party for revision of Bauxite pricing. APMDC informed to GoAP that additional profit of Rs.12,451 Crores based on cost of production, present sale value as per criteria adopted by GMD, could be earned by increasing Bauxite price in line with prevailing market rate.

7. The VC&MD, M/s APMDC in his further Letter, dt.29.06.2015 has reported that the Government of Andhra Pradesh have entered an MoU with M/s Jindal South West Hlding Limited (JSWHL) on 01.07.2005 and subsequently it was modified by two times i.e. on 03.08.2007 and on 15.11.2007. The Salient clauses of said MoU is as follows:

Salient clauses of MoU dtd.01.07.2005:-

Clause III:	**GoAP shall direct APMDC to supply the areas applied by them in Araku (Galikonda, Raktakonda and Chittamgondi) and Sapparla Groups consisting of approx. 2446 Hects and containing approx. 240 Million Tonnes of Bauxite Bauxite from out of ore for the use of Aluminium Company** @ price as fixed by a committee formed by GoAP based on cost of production and uninterruptedly as long as Industry is in operation. APMDC/ GoAP shall not sell for export of Bauxite from these deposits to any other party without meeting the requirements of the said company.
Clause IV:	JSWHL are its subsidiary shall identify the portion required out of the total extent of 2446 Hects consisting of Araku and Sapparla Groups (containing approx. 240 Million Tonnes of Bauxite ore) so as to get Forest and Environmental Clearance on priority basis by APMDC which can sustain for the supply of Industry for an initial period of about 5 years and JSWHL shall prioritize these Blocks to get Forest Clearances.
Clause VI:	JSWHL are its subsidiary company shall bear all the expenditure in preparation of Mining Plans, cost of afforestation, net present value being payable to the Forest Dept etc.

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Clause XII:	APMDC shall have discretion to either get the Technical Assistance from JSWHL are its subsidiary are go by their own Technical Expertize depending on the necessity. JSWHL /subsidiary shall provide cost of Infra structure required for Development of Mines as fixed by the Committee constituted by GoAP under para III. JSWHL / Subsidiary shall train the local tribals identified by the Dept of Tribal Welfare in Mining / Allied subjects (Both at Skills level Minor, Polytechnic and Degree level) for making use of them in the proposed project and ultimately observed them in the industry as par as possible. Substantial amount on the turn over will be earmarked for this purpose. Schooling and health facility will also be provided to the local tribals for their advancement. (a minimum of 0.5% of revenue shall be spent on the health, training, social , infrastructure and welfare of Tribals.
Clause XIV:	There will be a detailed Collaboration agreement between APMDC and the said Aluminium Company within the frame work of this MoU, within one month from the date of grant of Mining Leases. This MoU is subject to additions and / OR variations and / OR Deletions with the mutual consent in writing of both the parties hereto and shall come into force from the date of its signing by the Parties hereto and shall remain valid for 3 years OR till the commencement of commercial production (whichever is earlier) OR till either of the parties mutually agreed to severe the arrangements, OR this MoU is super-ceded by a detailed internal agreement as envisaged in para above.

The said MoU was Amended on 03.08.2007 as follows: (Amendment shown with Bold letters)

Clause III	GoAP shall direct APMDC to **mine** and supply Bauxite from out of the areas applied by them in Araku (Galikonda, Raktakonda and Chittamgondi) and Sapparla Groups consisting of approx. 2446 Hects and containing approx. 240 Million Tonnes of Bauxite ore to **JSWHL's Alumina Plant over the life of the plant at the price** as fixed by a committee formed by GoAP based on cost of production and uninterruptedly as long as Industry is in operation. APMDC / GoAP shall not shall for export Bauxite from these deposits to any other party without meeting the requirements of the **JSWHL's Alumina Plant**.
Clause IV	JSWHL are its subsidiary shall identify the portion required out of the total extent of 2446 Hects consisting of Araku and Sapparla Groups (containing approx. 240 Million Tonnes of Bauxite ore) so as to get Forest and Environmental Clearance on priority basis by APMDC which can sustain for the supply of Industry for an initial period of about 5 years and JSWHL shall prioritize these Blocks to get Forest Clearances. **APMDC shall take all necessary steps to obtain all the statutory approvals such as the Forestry Clearance, Environmental Clearance and obtain approval for the Mining Plan from IBM and any such other approvals as may be required to operationalize and operate the Mines in accordance with the approved Mining Plan. All these expenses in obtaining clearances as well as for taking of afforestation Program on account of Forest Land should be paid upfront by JSWHL.**
Clause VI	JSWHL are its subsidiary company shall bear all the expenditure in preparation of Mining Plans, cost of afforestation, net present value being payable to the Forest Dept etc. **This money should be paid upfront by the JSWHL.**
Clause XII	APMDC shall have discretion to either get the Technical Assistance from JSWHL are its subsidiary are go by their own Technical Expertize depending on the necessity. JSWHL /subsidiary shall provide cost of Infra structure required for Development of Mines as fixed by the Committee constituted by GoAP under para III. JSWHL / Subsidiary shall train the local tribals identified by the Dept of Tribal Welfare in Mining / Allied subjects (Both at Skills level Minor, Polytechnic and Degree level) for making use of them in the proposed project and ultimately observed them in the industry as par as possible. Substantial amount on the turnover will be earmarked for this purpose. Schooling and health facility will also be provided to the local tribals for their advancement. (a minimum of 0.5% of revenue shall be spent on the health, training, social , infrastructure and welfare of Tribals. **JSWHL / Subsidary shall train the Local Tribals identified by the Dept of Tribal Welfare in Mining / allied subjects (Both at Skills level Minor, Polytechnic and Degree level) for making use of them in the proposed project and ultimately absorb them in the Industry as far as possible. Substantial amount on the turnover will be ear marked for this purpose. Schooling and Health facilities will also be provided to the Local**

	Tribal for their advancement (a Minimum of 0.5 % of Revenue shall be spent on the health , training , Social infrastructure and welfare of the Tribals) APMDC shall train tribals and make use of them in the proposed Mining Project.
Clause XIV	There will be a detailed (**Bauxite Ore Supply Agreement)** Collaboration agreement between APMDC and the said Aluminium Company within the frame work of this MoU, within one month from the date of grant of Mining Leases. This MoU is subject to additions and / OR variations and / OR Deletions with the mutual consent in writing of both the parties hereto and shall come into force from the date of its signing by the Parties hereto and shall remain valid for 3 years OR till the commencement of commercial production (whichever is earlier) OR till (**both the**) either of the parties mutually agreed to severe the arrangements, OR this MoU is super-ceded by a detailed internal agreement as envisaged in para above.

Further the MoU was amended as follows on dt.15.11.2007:

The clauses III, IV, VI, XII and XIV of the MoU dtd.01.07.2005 as subsequently amended by MoU dtd.03.08.2007 shall be omitted.

8. In view of the omission of Clause III in the MoU dated 15.11.2007 the Corporation does not have any obligation to supply Bauxite Ore to M/s JSWHL and omission of Clause XII in MoU dated 15.11.2007 the Corporation has lost an opportunity to get the reimbursement of expenditure incurred on tribals. The Vice Chairman & Managing Director, M/s APMDC has sought permission to cancel / withdraw the MoU entered between Govt. of Andhra Pradesh and JSWHL.

9. After careful examination of above matter in detail, the Government hereby withdraws the Memorandum of Understanding (MoU), entered between Government of Andhra Pradesh and M/s Jindal South West Holdings Ltd., (JSWHL).

10. The Vice Chairman & Managing Director, M/s Andhra Pradesh Mineral Development Corporation Limited and the Director of Mines & Geology, AP, Hyderabad shall take necessary action accordingly in the matter, immediately, under intimation to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M. GIRIJA SHANKAR,
SECRETARY TO GOVERNMENT (M&G & FP)(FAC)

To
The Vice Chairman & Managing Director,
M/s Andhra Pradesh Mineral Development Corporation Limited, Hyderabad.
The Director of Mines & Geology, Andhra Pradesh, Hyderabad.
M/s Jindal South West Holding Ltd.,
Jindal Mansion, 5A Dr.G.Deshmukh Marg, Mumbai **(BY RPAD)**

Copy to:
The Secretary to Govt. of India, Ministry of Mines, Shastri Bhavan, New Delhi-110 001.
The General Administration (Cabinet) Department.
The Finance Department.
The Law Department.
PS to Hon'ble Chief Minister.
PS to Hon'ble Minister for Mines & Geology.
PS to Chief Secretary to Govt.
PS to Secretary to Govt., Ind. & Com. Dept.
SF/SC (**C.NO.17619/M.II(1)/2015**)

//FORWARDED :: BY ORDER//

SECTION OFFICER